IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA	§	
-v-	§	**W-18-CR-00302-ADA**
(1) JAMES LUTHER GODFREY III, *Defendant*	§	

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Came on for consideration Defendant James Luther Godfrey, III's Motion to Suppress Evidence (ECF No. 32). The Court has also reviewed the Government's Sealed Response to Defendant's Motion to Suppress (ECF No. 34), and the Court held a hearing for the Motion on March 6, 2019. After review of the Motion, the Response, and the evidence presented at the hearing, the Court **DENIES** Defendant's Motion.

BACKGROUND

On September 25, 2018, Ed Talley, a property inspector working for Lone Star Realty, entered an apartment in which Defendant allegedly resided.[1] Talley entered as part of a follow up investigation into a pet violation that had previously occurred in the apartment. Once Talley entered the premises, he smelled marijuana and noticed several containers of marijuana sitting in plain view. He then exited the premises and informed the Killeen Police Department what he had witnessed inside the apartment.

Officer Brandon Smith of the Killeen Police Department applied for a search warrant based on Talley's report. Upon obtaining the search warrant, officers entered the apartment and

[1]Defendant was not the individual listed as the tenant on the lease document. However, there is some evidence to suggest that Defendant resided at the apartment. As noted at the hearing, the Court does not reach the issue of standing in this Order.

found marijuana, weapons, and other items belonging to Defendant. Defendant now argues that the evidence obtained pursuant to the warrant should be suppressed.

LEGAL STANDARD

In reviewing a motion to suppress, the Court "engage[s] in a two-part inquiry: (1) whether the good-faith exception to the exclusionary rule applies; and (2) whether the warrant was supported by probable cause." *United States v. Laury*, 985 F.2d 1293, 1311 (5th Cir. 1993) (citations omitted). The court should first evaluate the applicability of the good-faith exception. *United States v. Mitchell*, 31 F.3d 271, 275 (5th Cir. 1994). If the good-faith exception does not apply, then the court considers whether the warrant is supported by probable cause. *Id.* "Principles of judicial restraint and precedent dictate that, in most cases, [the Court] should not reach the probable cause issue if a decision on the admissibility of evidence under the good-faith exception of *Leon* will resolve the matter." *United States v. Craig*, 861 F.2d 818, 820 (5th Cir. 1988). "The only instances in which this maxim should not be followed are those in which the resolution of a 'novel question of law . . . is necessary to guide future action by law enforcement officers and magistrates.'" *Id.* at 820–21 (quoting *Illinois v. Gates*, 462 U.S. 213, 264 (1983) (White, J., concurring)). This case presents no such novel question; thus, the Court will first address the applicability of the good-faith exception. *United States v. Lindsay*, No. 6-16-CR-143 RP, 2016 WL 4544546, at *2 (W.D. Tex. Aug. 31, 2016) *aff'd*, 709 F. App'x 299 (5th Cir. 2018).

DISCUSSION

I. The Good-Faith Exception

The good-faith exception applies to this case. The good-faith exception, announced by the Supreme Court in *United States v. Leon*, 468 U.S. 897 (1984), stands for the proposition that

"evidence obtained by officers in objectively reasonable good-faith reliance upon a search warrant is admissible, even though the warrant was unsupported by probable cause." *Laury*, 985 F.2d at 1311 (citing *Leon*, 468 U.S. at 922–23). However, "it is clear that in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued." *Id.* at 922–23. The Supreme Court posited four circumstances in which there would be no reasonable grounds for a belief that the warrant was properly issued. *Id.* The circumstances are as follows:

> (1) [T]he issuing-judge "was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth"; (2) the issuing-judge wholly abandoned his judicial role" in such a manner that "no reasonably well trained officer should rely on the warrant"; (3) the underlying affidavit is "bare bones" ("so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"); or (4) the warrant is "so facially deficient . . . that the executing officers cannot reasonably presume it to be valid."

United States v. Gibbs, 421 F.3d 352, 358 (5th Cir. 2005) (quoting *Leon*, 468 U.S. at 923).

In this case, Defendant claims the government's seizure was unlawful because it was "made upon the basis of an unreliable informant whose veracity or reliability was not verified within the four corners of the search warrant." Def.'s Mot. Suppress at 1, ECF No. 32. Notably, Defendant fails to clarify which of the four circumstances he relies on in his Motion. Despite this failure, the Court has still considered each of the circumstances set forth by the Supreme Court.

The relevant portion of the affidavit states as follows:

> On September 25, 2018 Ed Talley (Property Inspector) of Lone Star Realty entered into 904 Clairidge Ave Apt: A in reference to a follow up investigation from a previous pet violation (Pit Bull dogs) the tenant; Tineshia Burson violated.
>
> Talley informed me when he entered into the residence he immediately smelled the odor he knows to be marijuana emitting from the interior of the residence. Talley stated he walked through the residence for inspection of the pet

> violation and noticed two large jars and baggies of a green leafy substance known to him as marijuana sitting in plain view.
>
> Talley informed me once he noticed the illegal narcotics, drug paraphernalia and other items he exited the residence and contacted the Killeen Police Department.
>
> Within the 48-hour period preceding the preparation of this affidavit, illegal narcotics were located inside of the residence of 904 Clairidge Avenue, Apt. A, Killeen, Bell County, Texas.

Smith Aff., ECF No. 34-3 at 5. Based on the above portion of the affidavit, it is clear to the Court that the good-faith exception applies. Not only does the affidavit identify the source of the information and the informant's professional role, but it also states that Talley both smelled and saw the substance he recognized as marijuana. The Court concludes that the officers who relied on this search warrant did so with an objectively reasonable good-faith reliance.

Additionally, none of the four circumstances apply that would defeat the good-faith exception. The municipal judge who issued the warrant was not "'misled by information in the affidavit the affiant knew was false.'" *Gibbs*, 421 F.3d at 358 (quoting *Leon*, 468 U.S. at 923). Similarly, the issuing judge did not "'wholly abandon his judicial role'" in such a manner that "'no reasonably well-trained officer should rely on the warrant.'" *Id.* Finally, the underlying affidavit that was the basis of the warrant was not "'bare bones'" or "'so facially deficient . . . that the executing officers [could] not reasonably presume it to be valid.'" *Id.* Therefore, the Court concludes that the good-faith exception applies in this case. Because the good-faith exception applies, the Court does not need to reach the issue of whether probable cause existed within the affidavit.[2]

[2]Although the Court is not required to reach the issue of probable cause, it notes that probable cause did exist within the four corners of the affidavit.

II. The Inspector's Entry

The inspector's allegedly improper entry does not change the Court's holding. The Fourth Amendment's protections against unlawful searches and seizures only applies to governmental action, and "it is wholly inapplicable 'to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.'" *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (quoting *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting)).

In this case, Defendant claims the "search warrant was invalid based upon the fact that the informant who reported and allegedly observed unlawful contraband and three firearms made entry into Defendant's residence without cause and in violation of the lease contract in effect on the time and date of the seizure." Def.'s Mot. Suppress at 1, ECF No. 32. Defendant's argument fails. Even if the Court assumes that Talley's (the informant) search was without cause and in violation of the lease contract, the government's search and seizure was still lawful. Talley was a private individual, and there is no evidence that he was acting as an agent of the government when he entered the apartment where the evidence was located. Therefore, Tally's search does not invoke the Fourth Amendment's protections and is not a valid basis to suppress the evidence.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant's Motion to Suppress Evidence (ECF No. 32) is **DENIED**.

SIGNED this 12th day of March, 2019.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE